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THE PRINCIPLE IN FRATERNAL INSURANCE FOR ACCEPTANCE IN HOME AND OTHER STATES.

Since it was held in Supreme Council Royal Arcanum v. Green, 237 U. S. 531, L. R. A. 1916 A. 771, that the interpretation put upon a charter of a fraternal society by the state of its domicile is the principle that must be accepted in whatsoever state it does business, there have appeared rulings by U. S. Supreme Court in Supreme Lodge Knights of Pythias v. Mims, 241 U. S. 574, L. R. A. 1916, F. 919 and Sup. Lodge Knights of Pythias v. Smyth, 245 U. S. 594.

A late case by the Supreme Court of North Carolina, applies the rulings in the above cases to Hollingsworth v. Sup. Council Royal Arcanum, 96 S. E. 81.

The North Carolina Court holds, that "as there is no statute of this state" prohibiting increase in assessments by a fraternal society, this leaves construction put by the courts of the domicile of such an organization to be observed under the faith and credit clause of the constitution. The Green case ascertained what Massachusetts (the home state of the association) decided by referring to Reynolds v. Royal Arcanum, 192 Mass. 150, 7 L. R. A. (N. S.) 1154, 7 Ann. Cas. 776, and the view there taken has later been approved in Massachusetts in several cases, running from Hickey v. Baine, 195 Mass. 446 down to Ulman v. Golden Cross, 220 Mass. 442.

The Reynolds case declared what were the duties and liabilities of members organized under statute providing for fraternal societies. In effect it was there held, that such societies and their members stand precisely in the attitude of individuals contracting *inter sese* with full power at all times to change the original terms expressed in constitutions and by-laws, as might be deemed proper, the members and the societies to be represented as their charters and constitutions and by-laws provide. In this way it is readily seen that a policy, or benefit certificate, as it is usually denominated, is like any contract between individuals. Parties competent to contract in *limine*, remain competent to amend their contracts at all times. There is not, and cannot be, any status between them, that has in it anything of a vested interest not subject to be defeated by voluntary agreement afterwards, that is to say, if there is any consideration for any change in the original agreement. This consideration may well be conceived to exist in changes directed to preserving the permanence and strength of the mutual relations entered into at the start. If this stability is threatened, there ought to be something in the compact making it something else than a rope of sand that is binding.

Justice Holmes in the Mims case, *supra*, treats such societies in general aspect, without necessarily appealing to state rulings of home states regarding contracts entered into under charters. He hardly may be said to regard one of those societies as a corporation at all, in the real sense of that term. While each member dealing with it acquires an interest in a contract, yet that contract bears on its face right of modification at any time. Neither the member nor the society remains committed to its terms, when change is desired to be made, and is made in the way provided.

Thus the Justice says: "Persons who join institutions of this sort are not dealing at arm's length with a stranger, whose mode of providing for payment does not concern them, but only his promise to pay. They are joining a club, the members of which have to pay any benefit that any member can receive. The corporation is simply the machine for collection and dis-

tribution. * * * The essence of the arrangement was that the members took the risk of events."

It is easily understood, that if a few individuals get together and agree to contribute to a certain purpose, each to bear his proportionate part, if one incurs responsibility to a third person in acting for the aggregation, he ought to be reimbursed and may have an action therefor. That one agrees to pass around the hat so as to defray the obligation does not take away his right to reimbursement.

The Hollingsworth case approves this reasoning by Justice Holmes saying that "the provision as to permanency of the rate charged at entrance of a member is but a rule or regulation, subject to change as the necessities of the order might require. If plaintiff had bestowed even slight care upon his interests and informed himself, when he had ample opportunity to do so, he would have discovered what was the meaning of the clause as to the rates. It is too late after so many years have elapsed, even if there was any fraud or mistake, to ask for relief at the hands of a court of equity."

Possibly it might be true that a by-law proclaimed by a society of this kind might have some feature about it that would create an estoppel, but, when we regard the essence of these contracts and especially the fact that the only real contract that can legally be entered into, is one of equality of burden by members, any other agreement is *ultra vires*, so far as such a society is concerned, and any agreement for members to substitute their individual responsibility ought to be so unequivocal as to admit of no possible doubt.

It was also said in the Hollingsworth case that the principle of equality of burden is not possible, "if a benefit certificate issued to a citizen of one state should be entitled to a more favorable distinction than a similar certificate issued to the citizen of another state," a statement amounting on its face to a truism. Federal ruling under the faith and credit clause protects this principle; inherent justice ought to preserve it against state ruling in the home states of fraternal societies.

NOTES OF IMPORTANT DECISIONS.

PLEADING AND PRACTICE—RULINGS ON THEORY OF THE CASE AS TRIED.—It is not difficult to determine that the prevailing and dissenting opinions in a recent decision by Circuit Court of Appeals proceed upon rulings made upon the case as tried in the court below and not upon pleadings in the case. Corden Co. v. Houck Mfg. Co., 249 Fed. 285.

There is something of comment in the former opinion in saying that "the difficulty with this case is that the pleadings are wholly irresponsive to the issues actually made. The case was not tried on the pleadings as written and served, but upon what amounted to oral pleadings made shortly after the trial began, and upon the very proper insistence of the trial court that the issue be simplified. * * * The trial court would have been justified in withdrawing a juror and compelling an amendment in order that defendant might plead according to its statement in open court, and in a manner technically justifying the proof it proceeded to offer."

But the trial court, not doing this, disposed of the case as it was being tried on mere oral consent in open court and in doing this announced what was held to be error on the question of burden of proof. Reversal was adjudged for this error and the case was remanded without any direction to perfect the pleadings. It was said: "The case must be treated on this record as if the pleadings had been regular," and it appears that a new trial was directed upon irregular pleading, that is upon written and upon oral pleading, the latter to be preserved, we will suppose, in the record as it has been made.

The dissenting opinion accepts the record as made, but differs from the majority as to the application of the rule of burden of proof. On the whole, therefore, it is to be thought, that the Court of Appeals concedes that there is power in a court of original jurisdiction to entertain a cause on oral statements acquiesced in by parties or their counsel. Furthermore, it may be thought, as this cause suggests that it was in a federal district court by reason of

diversity of citizenship, a different cause might be disposed of than that transferred under the removal statute. No allusion, however, to this feature is made in either of the opinions.

It does appear, however, very clearly that the Court of Appeals decided a cause tried by the court upon consent without any sufficient pleadings, and upon the theory of the case as tried, and the rights of parties were passed upon in disregard of the pleadings.

In 86 Cent. L. J. 80, a very interesting leading article appears under the title, "Bacon's Prophecy—The Chaos of Cases," and there it is contended that "pleadings are jurisdictional and that a judgment not based on the pleadings is void," and many cases are cited to this view.

The argument, however, goes too far, for by the same token, if pleadings are jurisdictional, then they must be such at the time of the bringing of suit—pleadings as filed *in limine*. If jurisdiction is to attach at all, it must be as to a controversy at the time the jurisdiction is invoked. Amendment, therefore, becomes impossible, at least, so far as substance is concerned. As to mere matter of form this is different. By amendment one could not, even by consent, change subject matter of controversy, or form of action, say from tort to contract.

But if the Court of Appeals is right in adjudicating the controversy before it on writ of error, then there was absolute right for parties to consent and have a trial, and, respectfully we suggest, the trial court would not have been "justified in withdrawing a juror and compelling an amendment" of the pleadings. If the case could be entertained at all, it was the duty of the trial court to entertain it.

BANKRUPTCY—RIGHT OF COURT TO SELL PROPERTY FREE OF LIENS.—It was held by Circuit Court of Appeals for Second Circuit, that a court of bankruptcy has the right to sell property free of liens and to transfer the latter to proceeds of sale. Re Franklin Brewing Co., 249 Fed. 333.

Other decisions hold, as for example, re Progressive Wall Paper Corp., 122 Fed. 87, that this is true as to sale of real estate, which is incumbered, though the bankruptcy statute gives no express authority so to do.

In the opinion in Franklin Brewing Co. *supra*, it is said that: "Congress, in the exercise of its constitutional right to establish systems of bankruptcy, may, and indeed always does, impair the obligation of contracts, a doctrine going much further than this point requires. Mitchell v. Clark, 110 U. S. l. c. 643; Canada, etc., Ry. v. Gebhard, 109 U. S. l. c. 539. Therefore, we find in the order directing sale free of lien nothing unlawful, nor any abuse of discretion amounting to error of law. There was a drastic exercise of authority, but no intimation is intended that circumstances might not justify it as matter of discretion."

Allusion then is made to a case as supporting the proposition that it is legal error to order a sale, unless there is reasonable expectation of a surplus over lien, but the opinion says: "No such limitation can be found in them," but on the contrary it has been held that the jurisdictional power to order a sale exists in bankruptcy without a court "first determining either the validity or amount of the lien." No federal Supreme Court cases are cited. Some state courts have decided in the same way as do these cases. Eq. Trust Co. v. Vanderbilt Realty Imp. Co., 140 N. Y. S. 1008, 155 App. Div. 723; Shinn v. Kemp (Wash.), 131 Pac. 822; Toler v. Crowder, Ark., 192 S. W. 905.

In one case it has been ruled that a mortgagee should be given his day in court before any order is made to sell incumbered property free from liens. In re Stewart, 193 Fed. 791.

Does the power of Congress to enact a bankruptcy statute and thus impair the obligation of contracts, either confer the right to sell property that is incumbered free of liens, and, if it does, must not court, as vested with administrative power to enforce such a statute, be specifically given the power to make orders for such a sale?

It seems to us to be a matter of grave doubt whether Congress has such power. The proposition of impairing the obligation of contracts is only as to those contracts between debtor and creditor covered by the statute itself. It does not cover contracts outside of that act, and the only reason the lien is preserved is because it is upon a contract lying outside of the act.

Secondly, even if this be not strictly true, but only so because of exception made in the act itself, yet the court must give force to the exception as it appears in the statute. If the exception is in explicit, though general, terms, yet it is to be enforced, as exceptions are enforced, namely strictly. on property covered by lien to become subject

to sale as an asset of a bankrupt. If the owner of a lien is in no way subject to a statute, then he ought not to be disturbed by any proceeding affecting the property on which the lien exists. All that is said in favor of the rights of a mortgagee possibly is applicable to mortgagor, whose equity alone is affected by bankruptcy and it ought to be sold as such, so as to pass title. Also it would seem to be competent for any creditor of the bankrupt to object to any sale except the equity of redemption.

ROBBERY — CONSTRUCTIVE FORCE. — In State v. Snyder, 172 Pac. 364, decided by Supreme Court of Nevada, it was held that where defendant administered a drug to produce unconsciousness in a saloonkeeper, broke into cash register and took the money therefrom, the element of force necessary to constitute the offense of robbery was present, that is to say there was "constructive force."

The court cites many rape cases to the effect that where consent of a female is obtained by fraud or she is rendered incapable of resistance by partaking of liquor or drugs, an act of intercourse with her constitutes the crime of rape. But Cooley J. says there are some cases holding to the contrary, which in his view do not stand on better reason.

To us it seems gravely to be doubted, whether or not in the absence of statute on the subject, mere incapacity to give consent would of itself supply the necessary ingredient of force. Where a female is declared to be below the age of consent, intercourse is made rape by statute.

But the ruling by the court in the instant case seems right on the theory of making the administering of the drug part of the *res gestae* of a completed act. This would be as truly so as if an offender intending to perpetrate robbery kills one who opposes his intent. It would not seem to be robbery, if he came lawfully into a house and, finding the owner absent, steals his goods and wares. This would be larceny, even though the thief may have intended to resort to force or fraud were the owner present. Would it not be the same, if the offender came into the house lawfully and found the owner asleep or under the influence of a drug? "Constructive force," therefore, was not involved in the case before the court.

NON - CONTESTING CLAUSES, — THEIR EFFECT AND VALIDITY IN WILLS.

In the law of wills, it is well settled that no precise form of words is necessary in order to create a condition, and that any expression disclosing the intention will have that effect.[1]

Conditions found in wills are either precedent or subsequent; in other words, either the performance of them is made to precede the vesting of an estate, or the nonperformance to determine an estate antecedently vested.[2] There is no distinction in the way of technical words between conditions precedent and conditions subsequent, the distinction in matter of construction, dependent upon the intention of the testator as manifested by the will,[3] as said by an early writer, "Divers words there be, which by virtue of themselves make estates upon condition."[4]

The tendency of the Courts is to construe a condition as subsequent rather than as precedent, so as to give the devisee a present estate liable to be divested, rather than to defer the vesting.[5]

One form of condition which the practitioner frequently comes in contact with, is that condition which provides for forfeitures of benefits on beneficiaries contesting the will. On account of the vast amount of litigation in the courts of this country growing out of wills, many of which are contested, there is a demand among clients, wishing wills prepared, that the attorney

(1) 2 Jarman on Wills, 5th ed., p. 1.

(2) As to conditions precedent, see: Moore v. Perry, 42 S. Car. 369, 20 S. E. 200; Fisher v. Fisher, 80 Neb. 145, 113 N. W. 1004; Oetjen v. Diemmer, 115, Ga. 1005, 42 S. E. 388; Yale College v. Runkle, 8 Fed. 576, 10 Biss (U. S.) 300. As to conditions subsequent, see: Tappan's Appeal, 52 Com. 412; Smith v. Smith, 64 Neb. 563, 90 N. W. 560.

(3) 4 Kent. Com. 124; Finlay v. King, 3 Pet. 346; Hopkins v. Smith, 162 Mass. 444, 38 N. E. 1122.

(4) Littleton 328.

(5) Thompson on Wills, p. 250.

insert some binding condition which will avert a future contest which so often brings to light matters of private life that ought never to be made public, and in respect to which the voice of the testator cannot be heard, either in explanation or denial.

It is this demand that has resulted in there being more non-contesting clauses inserted in wills written to-day than ever before, and makes the question as to the legal effect of such clauses one of great importance to the active lawyer.

In the early cases we find some courts holding provisions of this nature in wills invalid from the standpoint of public policy.[6]

There is also a well defined line of cases holding such clauses of no force where there is probable or reasonable ground existing for the contest or dispute of the will.[7]

There are also cases holding such clauses invalid where the condition is annexed to a legacy without any provision for a gift over on breach of such condition.[8] It has also been held that such clauses are inoperative against infants.[9]

That in regard to personal property, provisions providing for forfeiture in case of a contest, have been construed as a mere threat, held *in terrorem* over the legatee, but not intended to deprive him of his interest.[10]

Upon the question as to whether the conditions under consideration are void, as against public policy, we may gather the argument advanced in support of such a contention from the following quotation:

"The condition they say 'is void, whether there be a devise over or not, as trenching on the liberty of the law' Shep. Touch. 132, and violating public policy. It is the interest of the state that every legal owner should enjoy his estate, and that no citizen should be obstructed by the risk of forfeiture from ascertaining his rights by the law of the land. It may be politic to encourage parties in the adjustment of doubtful rights by arbitration or by private settlement; but it is against the fundamental principles of justice and policy to inhibit a party from ascertaining his rights by appeal to the tribunal established by the state, to settle and determine conflicting claims. If there be any such thing as public policy, it must embrace the right of a citizen to have his claims determined by law."[11]

In a rather recent case in Iowa[12] the chief justice in dissenting from the majority opinion advances the argument most used against non-contesting clauses. The learned judge said, "I am convinced * * * * that such provision in a will is contrary to public policy, unless it be limited in its aplication to those contests wherein an element of bad faith enters. Under the law no will can become effective in any of its provisions until it shall have been admitted to probate by the court. Before admitting it to probate, it is the duty of the court to investigate the facts and circumstances attending its execution and bearing upon its validity, and to find judicially therefrom that such will was

(6) Mallet v. Smith, 6 Rich. Eq. 12, 60 Am. Dec. 107, see dissenting opinion; Schouler on Wills, 2d ed. sec. 605; see dissenting opinion of Evans, Ch. J. in Moran v. Moran (Iowa), 123 N. W. 202; Massy v. Rogers, Ir. L. R. 11 Eq. 409.

(7) In re Friends Estate, 209 Pa. 442, 58 Atl. 853, 68 L. R. A. 447; Fifield v. Van Wyck, 94 Va. 557; 27 S. E. 446, 64 Am. St. 745; Black v. Herring, 79 Md. 146, 28 Atl. 1063.

(8) Fifield v. Van Wyck, 94 Va. 557, 27 S. E. 446, 64 Am. St. 745; Cochran v. Cochran, 127 Pa. 486, 17 Atl. 981; Re Vandevort, 62 Hun. 612, 17 N. Y. Supp. 316; these holdings are to the effect that the condition against contest is merely in terroren where there is no gift over and not effective to shut out the contestant from sharing under the will.

(9) Brant v. Thompson, 59 Hun. 545, 14 N. Y. S. 28, 37 N. Y. St. 431.

(10) 2 Jarman on Wills, 5th ed. p. 57; Donegan v. Wade, 70 Ala. 501; In re Arrowsmith, 162 App. Div. 623, 147 N. Y. S. 1016; Fifield v. Van Wyck, 94 Va. 557, 27 S. E. 446, 64 Am. St. 745.

(11) Dissenting opinion in Mallet v. Smith, 6 Rich. Eq. 12, 60 Am. Dec. 107.

(12) Moran v. Moran (Iowa), 123 N. W. 202.

executed in due form, voluntarily, and understandingly by the proposed testator. If the court should find otherwise, it must reject the will and refuse its probate. * * * * If the court is to learn the truth from outside sources of information, it is manifestly important that the highway of information to the court be kept open, and that there shall be no lion in the way, but here is a forfeiture provision in the purposed will itself, which may be a roaring lion intended to terrorize every beneficiary of the will. Its demand is that no adverse evidence be volunteered. Its tendency is necessarily to suppress material facts, and thus to impede the administration of the law according to its true spirit."

A Pennsylvania case[13] stands as perhaps the strongest exponent among the courts of last resort in favor of the exception to the operation of the condition on the ground of *probabilis causa litigandi*. In that case there was a provision in the will that should any of the children or grandchildren contest the validity of the will or attempt to vacate, alter or change any of its provisions then he should be deprived of any beneficial interest thereunder and his share should go to others, naming them. One of the children contested the admission to probate of the will on the ground that its execution had been procured by undue influence. After this unsuccessful attempt it was claimed that he had forfeited all claim under the will by virtue of the non-contesting clause above set out. This contention was not sustained by the court below and on appeal the court held that as the son had probable cause for instituting the proceedings to contest the will, he had not forfeited the interest which his mother gave him in her estate. Mr. Justice Brown speaking for the Supreme Court, says: "It is not to be questioned that it was competent for the testatrix, possessing the absolute power to dispose of what she possessed just as she pleased, to impose the condition upon which the appellants rely in asking that their brother shall be deprived of all interest in her estate, and it is equally clear, in view of his attempt to annul her will, that the burden is upon him to show that he now ought to have what it gives him. Such conditions to testamentary gifts and devises are universally recognized as valid and by some courts, enforceable without exception. The better rule, however, seems to us to be that the penalty of forfeiture of the gift or devise ought not to be imposed when it clearly appears that the contest to have the will set aside was justified under the circumstances, and was not the mere vexatious act of a disappointed child or next of kin. A different rule,—an unbending one,—that in no case shall an unsuccessful contestant of a will escape the penalty of forfeiture of the interest given him, would sometimes not only work manifest injustice, but acomplish results that no rational testator would ever contemplate. This is manifest from a moment's reflection, and is illustrated by the class of cases to which the one now before us belongs, in which there is an allegation of undue influence which procured the execution of the will. If, as a matter of fact, undue influence is successfully exerted over one about to execute a will, that same influence will have written into it a clause which will make sure its disposition of the alleged testator's property. He who will take advantage of his power to unduly influence another in the execution of a will will artfully have a care to have inserted in it a clause to shut off all inquiry as to the influence which really made the will; and, if the rule invoked by the appellants is to be applied with no case excepted from it, those who unscrupulously play upon the feelings of the testator may, with impunity, enjoy the fruits of their iniquity, and laugh in scorn at those whom they have wronged."

This question was before the Supreme Court of South Carolina in the year 1912, and in holding that a devisee or legatee might contest the will on the ground of for-

(13) Re Friend, 209 Pa. 442, 68 L. R. A. 447.

gery, notwithstanding a non-contest clause, that court said: "No case has been cited, and we do not believe any can be found," sustaining the proposition that a devisee or legatee shall not have the right, upon probable cause, to show that a will is a forgery without incurring the penalty of forfeiting the estate given to him by the will. The right of a contestant to institute judicial proceedings upon probable cause, to ascertain whether the will was ever executed by the apparent testator, is founded upon justice and morality. If a devisee should accept the fruits of the crime of forgery under the belief, and upon probable cause, that it was a forgery, he would thereby become morally a *particeps criminis*, and yet, be confronted with the alternative of doing so, or of taking the risk of losing all under the will, in case it should be found not to be a forgery. Public policy forbids that he should be tempted in such a manner. This is far more obnoxious to public policy than a condition in the will against marriage."[14]

An eminent legal writer[15] in discussing this matter, says: "To exclude all contest of the probate on reasonable ground that the testator was insane or unduly influenced when he made it is to intrench fraud and coercion more securely; and public policy should not concede that a legatee, no matter what ground of litigation existed, must forfeit his legacy if the will is finally admitted. As for construction proceedings, the testator's own language may have rendered them necessary."

On the question as to who should decide whether the facts developed show a probable cause for the contest, we find a scarcity of adjudications; it has been held however that this question must, in every case, be for the court distributing the estate of the testator, and that this probable cause must clearly appear from the evidence, and if it is not clear, or if it is doubtful whether there was a probable cause, then the will of the testator should be regarded as supreme, and his direction to forfeit carried out, and it has further been held that advice of counsel is not of itself sufficient to show probable ground for the contest of a will, so as to avoid the effect of a clause forfeiting the interest of a legatee who instiutes such contest.[16].

An exception to the operation of the condition where there is no gift over upon breach in regard to a legacy has been regarded as established early in the English decisions,[17] it is claimed that it came to be recognized in England by the chancery courts to preserve uniformity, since legacies could be sued for and recovered in the ecclesiastical courts, which followed the rules of the civil law. It was held that as regard to personal property, that the provision for forfeiture would be construed as a mere threat, held *in terrorem* over the legatee, but not intended to deprive him of his interest. Only in the event that the will made provision for a gift over would the conclusion be adopted that the testator intended a forfeiture. Following the English rule are found many American decisions holding the condition of no effect in the absence of a gift over[18] and these use the same arguments above referred to in reference to the English cases.

It has been held that a non-contest clause in a will is inoperative as against an infant disputant. In the Bryant case[19] in so hold-

(14) Rouse v. Branch (S. C.), 74 S. E. 133, 39 L. R. A. (N. S.) 1160.

(15) Schouler on Wills, 2d ed., sec. 605.

(16) Re Friend, 209 Pa. 442.

(17) Powell v. Morgan, 2 Vern. 90; Loyd v. Spillet, 3 P. Wms. 344; Morris v. Burroughs, 1 Atk. 404; Cleaver v. Spurling, 2 P. Wms. 528.

(18) Pray v. Belt, 1 Pet. 670, 7 L. ed. 309; Parsons v. Winslow, 6 Mass, 169; 4 Am. Dec. 107; McIlvaine v. Gethen, 3 Whart. 575; Mallet v. Smith, 6 Rich. Eq. 12, 60 Am. Dec. 107; Maddox v. Maddox, 11 Gratt. 810; Binnerman v. Weaver, 8 Md. 517; In re Hamilton's Will, 165 N. Y. Sup. 71; Cochran v. Cochran, 127 Pa. 486, 17 Atl. 981.

(19) Bryant v. Thompson, 59 Hun. 545, 14 N. Y. Supp. 28. See also along the same line, Woodward v. James, 44 Hun. 95; Re Vandevort, 62 Hun. 612, 17 N. Y. Supp. 316; Bryant v. Tracy, 27 Abb. N. C. 183; Thompson on Wills, sec. 290; 40 Cyc. 1706.

ing the court said: "Any provision in a will which, in its application, comes in conflict with the organic or statutory law of the state, by which it is made the duty of the courts to look after the rights of infants, irrespective of the fact whether they are of tender years or not, must be deemed to be illegal and void as being against public policy. A testator cannot be permitted thus to obstruct, by any clause in his will, the necessary steps prescribed by law for the conduct of judicial proceedings in the case of infants, where the paramount duty of the court is to act in behalf of its wards, and for their best interests. No penalty or forfeiture can be worked against such a party who has done nothing more than to submit his rights to the adjudication of the courts. Any other rule as applicable to infants would work serious mischief."

Notwithstanding some holdings to the contrary, the decided weight of authority supports the validity of non-contesting clauses in wills, as against the argument that they are against public policy and against, "the liberty of the law." A leading case upon this question is Cooke v. Turner.[20] The question in that case arose upon a condition in a will to the effect that, if a devisee should dispute the will, or the competency of the testator to make it, the devise thereby given to her should be revoked. It was argued in that case that such a condition was void, as against public policy, because having a tendency to set up the wills of insane persons by restraining heirs named therein as devisees from contesting such wills, but the court in answer to this argument, said: "The conditions said to be void, as trenching on the liberty of the law, are those which restrain a party from doing some act which it is supposed the state has, or may have, an interest to be done. The state, from obvious causes, is interested that its subjects should marry; and therefore it will not in general allow parties, by contract or by condition in a will, to make the continuance of an estate depend on the owner not doing that which it is or may be the interest of the state that he should do. So, the state is interested in having its subjects embarked in trade or agriculture, and therefore will not allow a condition defeating an estate, in case its owner should engage in commerce, or should plough his arable land, or the like. The principle on which such conditions are void are analogous to that on which conditions defeating an estate, unless the owner commits a crime, are void. In the latter case the condition has a tendency to the violation of a positive duty; in the former, to prevent the performance of what partakes of the character of a duty of imperfect obligation. But in the case of a condition such as that before us, the state has no interest whatever apart from the interest of the parties themselves. There is no duty on the part of an heir, whether of perfect or imperfect obligation, to contest his ancestor's sanity. It matters not to the state whether the land is enjoyed, by the heir or the devisees; and we conceive, therefore, that the law leaves the parties to make just what contracts and what arrangements they may think expedient, as to the raising or not raising question of law or fact among one another, the sole result of which is to give the enjoyment of property to one claimant rather than another."

In a more recent case[21] the supreme court of California uses the following language along the same line of reasoning: "Preliminarily, it is to be observed that a condition such as this not only does no violence to public policy, but meets with the approval of that policy. Public policy dictates that the courts of the land should be open, upon even terms, to all suitors. But this does not mean that it invites or encourages litigation. To the contrary, it deplores litigation. *Interest reipublicoe ut sit finis litium,* and the great statute of frauds

(20) Cooke v. Turner, 15 Mees. & W. 727.

(21) Re Hite (Cal.), 101 Pac. 443, 21 L. R. A. (N. S.) 953.

and perjuries, and the laws limiting the time of the commencement of action, with many other of its rules and doctrines, are all designed to give repose and security by preventing litigation."[22]

The case of Smithsonian Institution v. Meech,[23] being a decision of the Supreme Court of the United States, is cited as a leading case upholding clauses forbidding contest of wills, but a careful study of that case will disclose the fact that, the clause in the will there in question was held to be of the nature of a conditional limitation, and the acquiescence of the legatee in the provisions of the will was held to be a material ingredient or part of the gift, which was in the nature of a condition precedent to his acquiring any right thereunder. The will in that case did not forbid a contest, but the bequests were made on the condition that the legatee acquiesce in the will and there was a gift over in case of a dispute to the residuary legatee. In the opinion of the case, Mr. Justice Brewer said: "When legacies are given to persons, upon conditions not to dispute the validity of or the dispositions in wills or testaments, the conditions are not in general obligatory, but only *in terrorem*. If, therefore, there exists *probabilis causa litigande*, the non-observance of the conditions will not be forfeitures (citing cases). The reason seems to be this: A court of equity does not consider that the testator meant such a clause to determine his bounty, if the legatee resorted to such a tribunal to ascertain doubtful rights under the will, or how far his other interests might be affected by it; but merely to guard against vexations. But when the acquiescence of the legatee appears to be a material ingredient in the gift, which is made to determine upon his controverting the will or any of its provisions, and in either of those events the legacy is given over to another person, the restriction no longer continues a conditional limitation. The bequest is only *quousque*, the legatee shall refrain from disturbing the will, and if he controvert it, his interest will cease and pass to the other legatee." After quoting from decisions upholding conditional clauses, the court concludes: "The propositions thus laid down fully commend themselves to our approval. They are good law and good morals. Experience has shown that often after the death of a testator unexpected difficulties arise, technical rules of law are found to have been trespassed upon, contests are commenced, * * * * and as a result the manifest intention of the testator is thwarted. It is not strange, in view of this, that testators have desired to secure compliance with their dispositions of property and have sought to incorporate provisions which should operate most powerfully to accomplish that result. And when a testator declares in his will that his several bequests are made upon the condition that the legatees acquiesce in the provisions of his will, the court wisely held that no legatee shall without compliance with that condition receive his bounty, or be put in a position to use it in the effort to thwart his expressed purposes."

We have noticed the distinction drawn by several of the courts between real and personal property in considering the validity of non-contest clauses, and many courts hold that there must be a gift over before such clause would be valid as to personal property. There is a tendency in the recent decisions to wipe out any distinction between personal and real property in a consideration of this matter. A leading case which considers carefully this phase of the subject was decided by the Supreme Court of California in the year 1909.[24] The will there in question contained a clause

(22) Cases may be found where provisions against contest are so worded as to be held void on account of being too broad or indefinite. See Rhodes v. Muswell Hill Land Co., 29 Beav. 560; Re Jackson, 47 N. Y. S. R. 443, 20 N. Y. Supp. 380.

(23) Smithsonian Inst. v. Meech, 169 U. S. 398, 42 L. ed. 793, 18 Sup. Ct. Rep. 396.

(24) Re Hite (Cal.), 101 Pac. 443, 21 L. R. A. (N. S.) 953.

which provided that if any of the heirs or devisees or anyone else contested the will, then they should receive no part of the estate, and it further provided that if such an event happened that he revoked any devise or bequest to such contestant.

It will be noted that there was no provision made for a gift over and one of the contentions of the attorneys for contestants was that the clause was void for want of a gift over. In holding against this contention the higher court said: "Respondent next urges that, even if it be held that the acts of Etta Gross amount to a contest, yet, as she was a legatee, and there was no gift over, of her legacy in the event of a contest, no forfeiture results. It is recognized that a forfeiture of land devised will result, under such circumstances, without a specific devise over. That decisions in abundance may be found holding that the same rule does not apply in cases of legacy is an anomaly of the law of wills. It rests upon no substantial distinction, and, where recognized, it is adopted in deference to the weight of earlier adjudications. It was not a part of the common law, as such, but came to be recognized in England by the chancery courts to preserve uniformity, since legacies could be sued for and recovered in the ecclesiastical courts, which followed the rules of the civil law. By the civil law the fiction was introduced that, unless there was a gift over of such legacy, a forfeiture would not be decreed. * * * * In this state the question is *res integra*. We are not embarrassed in its consideration by any adjudication of our own, and are at liberty to decide in accordance with sound reason. If it be that the rule anciently rested for its support upon the doctrine of public policy, we find, even in England, where the rule prevails, that such support has been withdrawn. If it rests, as it seems to have rested in England, upon the desire of the chancery court to conform to the decisions of the ecclesiastical court, such a reason does not, in this state obtain. In brief, no reason can be found why such a rule, founded neither upon public policy, nor the dictates of the common law, should by us be given recognition."

The matter is summed up by Judge Redfield,[25] in the following language: "The rule of the English law, as to conditions against disputing the will, annexed to some bequests, seems to be in a most absurd state of confusion. It is held that such a condition is void as to personality, unless the legacy be given over in the event of failure to perform the condition, but that such a condition is entirely valid as to real estate, whether there be any gift over or not. And it is agreed that there is no substantial ground for any distinction in this respect between real and personal estate. Hence, we assume that, in this country, any such condition which is reasonable, as one against disputing one's will surely is, as nothing can be more in conformity to good policy that to prevent litigation, will be held binding and valid." The question often arises in cases of this kind as to whether there really was a contest of the will; this must be determined by the facts and circumstances in each case, although it has been held that the mere filing of a caveat will not be construed as a contest of a will,[26] nor will instituting an action to obtain the construction of a will be so considered.[27]

From the conflicting authorities it is difficult to deduce principles, but the following seems to be established and should be followed in view of the unsettled condition of the law:[28]

(25) 2 Redf. Wills, sec. 679.

(26) McCahan's Estate, 221 Pa. 188, 70 Atl. 711.

(27) Black v. Herring, 79 Md. 146, 28 Atl. 1063; Woodward v. James, 44 Hun. 95; Matter of Vom Saal, 145 N. Y. S. 307.

(28) See the following recent authorities on the various phases of this subject: Matter of Kirkholder, 149 N. Y. S. 87; Sherwood v. McLaurin, 88 S. E. 363; In re Kathan, 141 N. Y. S. 705; Lewis's Est. 19 Pa. Dist. 432; Matter of Arrowsmith, 147 N. Y. S. 1016; Drennen v. Heard, 211 Fed. 335, 128 C. C. A. 14; Pray v. Belt, 26

1. Conditions annexed to legacies and devises, providing for forfeiture in case the will is contested, are valid.

2. In case of a legacy it is best to provide for a gift over of the subject matter of the legacy in case of a breach of the condition.

3. Where the will is contested on behalf of an infant legatee or devisee, the forfeiture will not be decreed, irrespective of whether there was a gift over or not.

4. In the preparation of the clause against contest, it is advisable, if practicable, to make the condition precedent so that the gift will not vest until the condition is performed, or in other words make the bequests upon the condition that the legatees acquiesce in the provisions of the will.[29]

SUMNER KENNER.

Huntington, Indiana.

U. S. 1 Pet. 680; Massie v. Massie, 54 Tex. Civ. App. 617, 118 S. W. 219; Perry v. Rogers, 52 Tex. Civ. App. 594, 114 S. W. 897; Bradford v. Bradford, 19 Ohio St. 546.

(29) The state of Indiana has a statute providing that all non-contesting clauses in wills shall be void and of no effect. Burns Ann. Statutes, Supp. of 1918, sec. 3154a. This law has never been tested and its validity is doubtful.

MASTER AND SERVANT—ENTICEMENT.

S. C. POSNER CO., Inc., v. JACKSON, et al.

Court of Appeals of New York.
Decided April 23, 1918.

119 N. E. 573

If a person knowingly and intentionally interfere with the express contract rights of an employer with his employe, and the purpose and intent of such interference is to injure such employer, and it does result in his injury, an action will be sustained to recover damages therefor.

CHASE, J.: The sufficiency of the complaint is challenged. In considering this appeal we must take its allegations as true. The plaintiff's right to recover thereon, if at all, depends: (1) Upon its right to the employe's service pursuant to the express contract for a definite period of time; (2) the defendants' knowledge of the contract and of the same being valuable, important, and essential to the plaintiff in maintaining its business as the defendants' competitor; (3) the defendants' willful and malicious intent and purpose to injure the plaintiff by depriving it of such employe's services as provided in the contract.

The employe contracted to "devote the whole of her time, attention, and energy to the performance of her said duties," and that she would not "until the expiration of such contract, or any extended term thereof, either directly or indirectly, engage in or become associated in the business of manufacturing or selling any kind of ladies' garments, apparel, or other similar articles, either as principal, agent, or employe." The employe's failure to perform her contract so far as appears was inexcusable. She is liable at law for the damages occasioned by her failure to perform her contract. As the services to be performed by her under the contract were special, unique, and extraordinary, if the remedy at law is inadequate, an action could have been sustained in equity to restrain her from the violation of the negative covenants to which she became bound in connection with her employment. McCall Co. v. Wright, 198 N. Y. 143, 91 N. E. 516, 31 L. R. A. (N. S.) 249; Hitchman Coal and Coke Co. v. Mitchell, 245 U. S. 229, 38 Sup. Ct. 65, 62 L. Ed.—.

The faithful performance of the covenants by the employe was of vital importance to the employer. It is apparent from the allegations of the complaint that if the contract is not performed, serious injury to the plaintiff must necessarily result therefrom. When the defendants induced the employe to break her contract with the plaintiff "it was well known to them that the plaintiff had been organized" by the employe, and "that she was one of the principal persons engaged in its management, that she had loaned to its enterprise her name, and she was then a director and president thereof, and in the employ of the plaintiff, and that she was a party to a written contract of employment for her exclusive services for a period of years to come."

In persuading the employe to break the contract with the plaintiff the defendant Jackson acted for himself and for the defendant corporation. He intended "to injure the plaintiff in its business," and entice such employe from the plaintiff and persuade her to break her contract with the plaintiff for

the purpose of "depriving it of her services and of securing such services for a competitor and of thereby injuring this (plaintiff) corporation."

It is alleged that in pursuance of a wrongful corrupt, and malicious purpose the defendants induced the employe to abandon and break her aforesaid contract and in violation of the same to enter into the employ of the defendant E. A. Jackson, Incorporated, "a competing business." Such contract as that described is a property right. An interference with such a property right by which it is lost to an employer is a wrong in morals, and, when without justification or excuse, may be an actionable tort for which damages can be recovered against the wrongdoer.

If a person knowingly and intentionally interfere with the express contract rights of an employer with his employe and the purpose and intent of such interference is to injure such employer, and it does result in his injury, an action will be sustained to recover damages therefor.

NOTE.—*Right to Induce Employe to Leave His Employment.*—Conceding it to be true that an employment contract, whether it be at will or for a definite time, is a property right and malicious interference therewith by another is an actionable tort, may another in seeking his own benefit induce either party to commit a breach of his contract of employment? The instant case goes upon the theory, that there must be intent to interfere with existing contract rights, so, in the case considered, as to injure employer.

In Hitchman Coal & Coke Co. v. Mitchell, 245 U. S. 229, 38 Sup. Ct. 65, 62 L. ed. —, the majority and minority disagreed upon the sufficiency of the reasons inducing the interference with the contracts of employment. The prevailing opinion seems to consider that "there was no genuine desire" by defendants "to increase the membership of the union without unnecessary injury to the known rights of plaintiff" in its contracts with its employes. The dissent accepts the principle that it is not permissible to induce one to leave his employment where this is from mere malice, but if there is some reason lawful in itself to be accomplished, as for example, to benefit a union that may lawfully be formed, this makes interference justifiable, and the interest, in which the interferer has in this, it would appear, need not be a direct pecuniary interest an interferer has in a union. In arguing, the prevailing opinion says: "Certainly, if a competing trader should endeavor to draw customers from his rival, not by offering better or cheaper goods, employing more competent salesmen or displaying more attractive advertisements, but by persuading the rival's clerks to desert him under circumstances rendering it difficult or embarrassing for him to fill their places, every court of equity would grant an injunction to restrain this as unfair competition." Taking the converse of this proposition and considering that clerks of a rival are induced to desert him, so he may not be an effective rival, why may not this be as legitimate as to overcome his rival by offering better inducements than he? And, if a purpose is to build up a force among employes that shall inure, or promises to inure, to an interferer's benefit, presently or ultimately, why is it not lawful to try to achieve such a result? This leaves out of consideration what may be deemed a purely altruistic reason, such as the dissent deemed sufficient to justify an interference with contract rights.

In Thacker Coal & Coke Co. v. Burke, 59 W. Va. 253, 53 S. E. 161, 5 L. R. A. (N. S.) 1091, there is unanimous opinion of the court to the effect that a wrongful interference with a contract of employment gives to a master a right of action. But it was said that "where there is a contract of employment and a third party causes its violation, he is liable to an action," and pleading an averment that defendant was moved by malice is sufficient without its being further stated that interference was for the third party to benefit his own business, his own trade or his own interest in any shape.

There is quite an extended citation of cases in the opinion in this case and all of them appear to support the proposition, that the interference must be wrongful, in that the interferer is not seeking his own benefit in interfering with the contract relation. "The intent of defendant and the natural or actual effect of its execution, is the gist of the action." The interference must not be "without right or justifiable cause."

Wood's Master and Servant, § 231, says: "From an early day it has been established that a master may maintain an action against one who entices away his servant or harbors and detains him with knowledge of his former contract." And in 16 Am. & Eng. Encyc. Law, 2d ed., p. 1109, it is said that: "Since the statute of laborers the common law has recognized the right of a master to recover for the actual damage he may have suffered by a wrongful interference," etc. But what is a wrongful interference?

It is said in Hammon on Contracts, § 350, that: "Many courts lay down the broad principle that a man who unjustifiably induces one of two parties to a contract to break it, intending thereby to injure the other or *to obtain a benefit for himself*, does that other a wrong for which he must respond in damages." The italics are as this annotator quotes the above.

It was held in South Wales Miners' Federation v. Glamorgan Coal Co., (1905) A. C. 239, 3 Ann. Cas. 436, that for the officers and executive council of a federation of miners to procure members of the federation to stop work on certain days was unjustifiable though they were not actuated by malice or ill-will toward employers, but the purpose was to keep up the price of coal and the wages of miners. It was held by the members of the House of Lords, that the executive council could not advise members of the federation to breach their contracts, though such members were only seeking their own interests in following such advice. It was said by one of the Lords that: "There are cases in which it is not actionable to exhort a person to break a contract may be admitted; and it is very difficult to draw a sharp line separating all such cases from all others. But the so-called advice here was much more than

counsel; it was accompanied by orders to stop, which could not be disobeyed with impunity. A refusal to stop work as ordered would have been regarded as disloyal to the federation." The thought to be deduced is, that interference by an outsider having the power to bring pressure on an employe cannot be justified when it is intended to call that pressure into play.

In Brennan v. United Hatters of North America, 73 N. J. L. 729, 65 Atl. 165, 9 L. R. A. (N. S.) 252, 118 Am. St. Rep. 727, 9 Ann. Cas. 698, the doctrine is upheld, that where by collateral contract an employee or employer agrees to vest in a labor union the power to affect contracts as contracts between employer and employee and the labor union exerts such power it becomes liable to the party injuriously affected thereby.

The principle in all such cases seems to be that in contract between two persons one has right to expect performance, as if the two were at the time free agents. But we do not believe it ever has been held, that a contract of employment may not be interfered with by a third person, who is merely seeking his own benefit. But, if either at the time the contract is entered into or subsequently either party agrees that a third party may by coercive means or even by persuasion, influence either to violate it, and by virtue of such agreement the third party interferes, this subjects him to an action for damages. Only two parties contract with each other. If secretly or fraudulently, another comes in, this makes another contract, to which only one of the parties consents. The third party under such circumstances bases his right to interfere upon fraud in fact or in law. If either party accepts interference by a third party he is bound thereby. C.

ITEMS OF PROFESSIONAL INTEREST.

BAR ASSOCIATION MEETINGS FOR 1918 —WHEN AND WHERE TO BE HELD.

American—Cleveland, Ohio, Hotels Winton and Statler; August 28, 29 and 30.

Alabama—Montgomery, July 12 and 13.

Colorado—Colorado Springs, July 12 and 13.

Indiana—Indianapolis, July 10.

Minnesota—Faribault, August 13, 14 and 15.

New Hampshire—Crawford House, White Mountains, July 6.

North Dakota—Bismarck, August 8 and 9.

Ohio—Cleveland, August 26 and 27.

Oregon—Portland, November 19 and 20.

South Carolina—Spartanburg, about August 1.

South Dakota—Sioux Falls, July 31 and August 1.

Tennessee—Chattanooga, August 7, 8 and 9.

Washington—Tacoma, July 25, 26 and 27.

West Virginia—Elkins, July 16 and 17.

HUMOR OF THE LAW.

Hon. Kenneth Mackintosh, recently appointed to the Supreme Bench of Washington, has had painted on the door of his chambers the words, "Walk in." He explained to a meeting of the Seattle Bar Association that by this he did not desire to appear sensational, but he wished to avoid being buried alive in a catacomb. He declared also that in his opinions he would not endeavor to instruct the bar by discussing elementary principles. He expected to state his reasons briefly and to consume less printer's ink than do most appellate judges. May his tribe increase!

George Washington Jones: You all heah 'bout dis yere insurance bizness?

Abraham Lincoln Brown: Hm! Sho did. How much you all gona take?

G. W. J.: O, 'bout $10,000.

A. L. B.: Niggah, yo crazy! You ain' got no fam'ly or nobudy. I's got a wife and seben kids and I's gona git me $500.

G. W. J.: Ain' gona be no $500 fo' me! When we gits in dis yere fightin', I'm tellin' yo, niggah, dey ain' gona sen' no $10,000 men "ovah de top" while dey's $500 ones hangin' round'.

Getting divorce evidence is the latest use for a periscope. The other day in a court in Kansas City, Harry Winkler described with such remarkable vividness and detail an incident which he said had occurred within the privacy of his wife's boudour, in a fashionable apartment-house following their separation, that the morbid throng in the court room sat up and gasped. Mrs. Winkler's attorneys held a hasty and whispered conversation with their client. Then they turned their legal guns on the smiling, debonair Mr. Winkler.

"How did you do it?" they thundered.

"I used a periscope," he explained.

From behind the high-backed witness chair the witness drew from its concealment a short, oblong package, which he extended much in the fashion of a mariner's telescope.

"There it is," Winkler observed, as he turned to the window at his back and far above his head. Carefully he extended the instrument until the farther end rested on the sill of the window.

The attorneys moved forward as one, looked —and were convinced.

"Enough," the court said. "Divorce granted." —Capper's Weekly.

WEEKLY DIGEST

Weekly Digest of ALL the Important Opinions of ALL the State and Territorial Courts of Last Resort and of ALL the Federal Courts.

Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Adverse Possession**—Burden of Proof.—The burden is on a defendant claiming by adverse possession to fix the time when he began to hold adversely to the true title.—Hynds v. Hynds, Mo., 202 S. W. 387.

2. **Animals**—Trespass.—If dog is in pursuit of domestic animal, threatening its injury or destruction, owner of animal is entitled to kill dog.—Scott v. Cates, N. C., 95 S. E. 551.

3. **Attorney and Client**—Burden of Proof.—Where bank showed it was assigned a contract as security, and that defendant attorneys knew of such assignment, it showed a prima facie right to all the proceeds as against the defendants, who were employed by the contractor to collect money earned under the contract, and who retained their fee therefrom, thereby placing burden on attorneys to show value of services and their right to retain the amount.—Southern Nat. Bank v. O'Brien, N. C., 95 S. E. 546.

4.——Lien.—Rev. Laws 1910, § 247, attorney has a lien only upon his client's affirmative cause of action which cannot be extended to services merely protecting an existing right or title in client's property.—Elliott v. Orton, Okla., 171 Pac. 1110.

5. **Bankruptcy**—Partnership.—Where member of California partnership sold his interest and removed to Nebraska, establishing his residence there and carrying on no business in California for more than three months prior to initiation of proceedings, District Court for California is, notwithstanding his insolvency, without jurisdiction under Bankruptcy Act, § 2, subd. 1, to adjudicate him bankrupt as individual.—In re Fackelman, U. S. D. C., 248 Fed. 565.

6. **Banks and Banking**—Bill of Lading.—State bank, buying a bill of lading with draft attached, is not engaging in trade or commerce by "buying or selling goods, chattels, wares or merchandise" in contravention of R. L. 1910, § 266.—Marsh Milling & Grain Co. v. Guaranty State Bank of Ardmore, Okla., 171 Pac. 1122.

7.——Provisional Credit.—Where bank credits a depositor on faith of sight draft deposited to his account, but which is dishonored, it may charge amount of draft back to depositor, and, if his deposit is insufficient and he refuses reimbursement, may recover the sum involved.—Lyon County State Bank v. Schaefer, Kan., 171 Pac. 1159.

8. **Carriers of Goods**—Charges.—Under Public Utility Act Cal. §§ 14, 15, and section 17(a), subd. 2, a rate, when reasonable and adopted and published with consent of Railroad Commission, becomes fixed and certain, and no other rate than that specified may be charged or collected.—In re Independent Sewer Pipe Co., U. S. D. C., 248 Fed. 547.

9.——Damages.—In action for damages to shipment of onions, testimony of plaintiff's representative at destination point that, though all of the sacks were not examined, an examination of 50 or more sacks satisfied him that the onions in both cars were damaged by freezing, entitled plaintiff to recover some damages.—Jones v. Toledo, St. L. & W. R. Co., Mo., 202 S. W. 433.

10.——Delivery.—Express company's failure to deliver receipt to shipper as required by Carmack Amendment to Interstate Commerce Act imposes on company highest responsibility, and law implies obligation to deliver to consignee at address shown on shipment within reasonable time.—Southern Express Co. v. Malone, Ala., 78 So. 408.

11.——Inspection.—In action by consignee of hay against railroad for damages from failure to permit adequate inspection, evidence held to show notation on bill of lading, "Allow inspection," is universally understood by shippers and railroads to mean side-door inspection.—Houston, E. & W. T. Ry. v. Ratcliff, Tex., 202 S. W. 525.

12. **Commerce** — Employes. — Laborer, employed on fill which when completed was intended to support tracks of railroad engaged in intrastate and interstate commerce, was not "employed in interstate commerce" so as to have an action, for personal injury under federal Employers' Liability Act.—Kinzell v. Chicago, M. & St. P. Ry. Co., Idaho, 171 Pac. 1136.

13.——Employes. — Servant injured while working on main power line carrying alternating current to substations which converted it to direct current for operating cars in interstate commerce was not injured in "interstate commerce"; his employment being too remote.—Southern Pac. Co. v. Industrial Acc. Commission, Cal., 171 Pac. 1071.

14.——Safety Appliance Act.—In action for brakeman's death by fall caused by defective handhold on car in interstate commerce, the case was governed by federal Safety Appliance Act April 14, 1910, and federal Employers' Liability Act April 22, 1908.—Sullivan v. Minneapolis, St. P. & S. S. M. Ry. Co., Wis., 167 N. W. 311.

15. **Common Carriers** — Employers' Liability Act.—Recovery in action falling within federal Employers' Liability Act, declaring that common carriers shall be liable in damages for injuries due to their negligence, can in no way be modified by Workmen's Compensation Act of state in which accident happened.—Erie R. Co. v. Linnekogel, U. S. C. C. A., 248 Fed. 389.

16. **Constitutional Law**—Personal Rights. — Act May 13, 1915 (P. L. 286), regulating employment of minors and providing that no minor shall be employed to work in any establishment unless employment certificate has been issued as provided by act, is not incompatible with employer's personal rights of contract.—Commonwealth v. Wormser, Pa., 103 Atl. 500.

17. **Contracts**—Public Policy.—Contract, made when practice of chiropractic was not licensed in Missouri, whereby plaintiff agreed to teach defendant such non-licensed profession, and to furnish him a diploma authorizing him to practice when profession was legalized, was not contrary to public policy and void.—Pennington v. Davis, Mo., 202 S. W. 424.

18. **Corporations**—Directors.—Where corporate directors, who were sole stockholders other than officer of corporation and his wife, neglected to examine corporate books, and examination would have disclosed transactions complained of, directors must, by reason of their dereliction of duty, be deemed to have knowledge of such transactions, so that it was imputable to corporation.—F. M. Davies & Co. v. Porter, U. S. C. C. A., 248 Fed. 397.

19.—Equity.—Where there are a number of creditors, a single creditor cannot maintain a bill in equity against the stockholder of an insolvent corporation to collect unpaid subscription for his benefit alone.—John A. Roebling's Sons Co. of California v. Kinnicutt, U. S. D. C., 248 Fed. 596.

20.——Gifts.—Corporation organized "for the education of youth, the pursuit of science and the general diffusion of knowledge," could receive gift of money for erection of church for use of students, under its charter power entitling it to purchase, take, hold, and convey realty or personalty.—President and Council of Mt. St. Mary's College v. Williams, Md., 103 Atl. 479.

21.——Purchase of Stock.—Where no offer had been made to corporate stockholders to purchase their stock, and no such offer was mentioned in their offer to corporation to sell, transaction did not come within provision of charter giving corporation election to purchase if stockholder desired to sell.—Durham Life Ins. Co. v. Moize, N. C., 95 S. E. 552.

22.——Salary of Officers.—Arrangements by corporate directors for additional salary to be paid them as officers from earnings in excess of amount required to pay dividends, to be divided in certain proportions between officers or according to holdings of stock, held not illegal appropriation of company funds as amounting to division of profits between stockholders of same class not according to amount of stock each owned.—Foster v. C. G. Howes Co., Mass., 119 N. E. 356.

23.——Subscription.—Where one subscribed to corporation's capital stock on faith of its guaranty signed by its treasurer that it would furnish with a buyer for stock within six months, corporation was liable for its failure to furnish buyer on subscriber's request.—Lemmon v. East Palestine Rubber Co., Pa., 103 Atl. 510.

24. **Damages**—Action for.—The mere fact that the establishment of damages claimed is difficult of proof and ascertainment is no reason for holding that they are not recoverable.—Limbaugh v. Boaz, Ala., 78 So. 421.

25.——Discrimination.—An action to recover damages from a public service corporation for unjust discrimination against plaintiff in rates is in tort, and the damages must be pleaded and proved.—Homestead Co. v. Des Moines Electric Co., U. S. C. C. A., 248 Fed. 439.

26. **Depositaries**—Withdrawals. —Where proceeds of school district bonds paid to county treasurer were deposited in bank operating under depositary law, the fund could not thereafter be withdrawn and deposited in bank's savings department to credit of clerk of school district. —Blaine County v. Fuld, Idaho, 171 Pac. 1138.

27. **Divorce**—Coercion.—Where husband twice coerced wife into taking drugs calculated to cause miscarriage, which twice took place, drugs being procured on husband's prescription, and thereby health of wife was undermined and she had to undergo operation, she was entitled to divorce.—Cunningham v. Cunningham, Mo., 202 S. W. 420.

28.——Statutory Construction.—Money and labor put into wife's property, greatly enhancing its value, constitutes, within designation of St. 1917, § 2364, an "estate derived from husband" which may be distributed by court upon granting of divorce.—Martin v. Martin, Wis., 167 N. W. 304.

29. **Dower**—Priority. — In case of purchase money lien widow of vendor is entitled to dower in kind in land, if it will sell subject to her dower for sufficient to pay such lien debt, or if part thereof, sold free of dower, leaving a sufficient part to sustain the assignment of dower, will sell for such sum, or if sale of part of it free from dower and the residue subject to dower will produce such sum.—Sleeth v. Taylor, W. Va., 95 S. E. 597.

30.—Separation Agreement.—Under separation agreement providing for certain payments to wife and that she should sign all proper releases, and other deeds of conveyance which her husband might thereafter present for her signature, she did not lose her right of dower, in absence off express release.—In re McVay's Estate, Pa., 103 Atl. 505.

31. **Eminent Domain** — Damages. — Where change of grade of street is made, measure of damages is difference between market value, before and after change of grade, of both the lot and improvements placed on it before grade was established.—Nestlehut v. City of De Soto, Mo., 202 S. W. 425.

32. **Estoppel**—Right of Action.—Defendant in possession of the property of a mining corporation under a stock transfer agreement with plaintiff, the principal stockholder, upon termination of the agreement, because of default in payment of price, cannot deny plaintiff's right to recover possession on ground that title to the property is in the corporation.—Lefurgey v. Prentice, Cal., 171 Pac. 1080.

33. **Executors and Administrators** — Possession.—Whether surviving husband of wife dying without children, by right of his heirship, under Rev. St. 1909, § 350, was entitled to a note payable to husband and wife "share and share alike" as his one-half of her personal estate, depended upon distribution in probate court, until which time such note would remain in possession of her administrator.—Messenbaugh v. Goll, Mo., 202 S. W. 265.

34. **Explosives** — Evidence. — In action for damages by fire, alleged to have been caused by neighboring explosion, evidence as to condition of basement when cleaned out months after the fire, after the weather had its effect, was admissible; its weight being for the jury. —Hamilton v. Cranford Mercantile Co., Ala., 78 So. 401.

35. **False Pretenses**—False Token. — Indictment for obtaining money under false pretenses by use of a certain printed or lithographed

paper resembling an ordinary $20 bill of the United States of America sufficiently described the false token alleged to be used by defendant. —Pruitt v. State, Fla., 78 So. 425.

36.——Indictment and Information. — Indictment under Gen. St. 1906, § 3308, for embezzlement, alleging that defendant "did borrow" from another a shotgun, sufficiently alleged that he received it into his possession; "borrow" not being limited to sense of returning the thing borrowed in specie, but also meaning to receive or take from another for one's own use.—Henderson v. State, Fla., 78 So. 427.

37.——Variance. — That indictment charged that defendant obtained $50 of value of $50 by means of confidence game, and that proof showed that defendant secured an overcoat of value of $18, a satchel of value of $10 and $22 in money, did not constitute a variance.—People v. Dempsey, Ill., 119 N. E. 333.

38. **Franchises**—Public Service Corporation. —Right of public service corporation to hold secondary franchise that can be exercised only on municipality's permission depends on continuous performance of duties of franchise.—City of Wheeling v. Chesapeake & Potomac Telephone Co., W. Va., 95 S. E. 653.

39. **Fraud**—Burden of Proof.—In absence of a showing of fraud, the court cannot relieve against a sale of an heir's interest, purporting to be made for its full value, out of which she received but a small part of its value on account of excessive commissions, interest, and expenses charged.—Norris v. Wright, Cal., 171 Pac. 1087.

40.——Evidence.—Where defendant had option upon concessions for sale of ice cream when contract for sale of same was made with plaintiffs and later procured a formal contract by which concessions were procured for plaintiffs, defendant's representations that he was owner of concessions affords no basis for cause of action.—Vlates v. Catsigianis, Mo., 202 S. W. 441.

41.——False Statement.—Buyer of automobile may recover for false statement of seller's agent as to date of manufacture, though buyer had the machine examined before buying, where such examination was as to the condition of the machine and batteries, and not as to its date.—Munn v. Anthony, Cal., 171 Pac. 1082.

42. **Fraudulent Conveyances** — Bulk Sales.—Where a sale of merchandise in bulk is not made as prescribed by bulk sales statute (Comp. Laws 1913, § 7226), the goods of the debtor become a trust fund for his creditors, and the purchaser a trustee for the creditors.—Minneapolis Drug Co. v. Kearnes, N. D., 167 N. W. 326.

43.—Garnishment.—Where lesses A. and W., at time a corporation was formed by A. and others were in default for rent, and A., who was solvent, turned over all his property to corporation for shares of stock, and transferred stock to wife without consideration, such stock was subject to garnishment to satisfy judgment against A. and wife for rent, whether or not the stock became separate or community property, since the transfer was made in the face of existing equities in favor of the lessors.—Robinson v. Agnew-Copping Realty & Investment Co., Wash., 171 Pac. 1057.

44. **Habeas Corpus**—Extradition.—On habeas corpus Governor's warrant of extradition presumptively establishes that accused stands charged in proper form with a crime committed in the demanding state, and that he is a fugitive from justice.—State v. Boekenoogen, Minn., 167 N. W. 301.

45. **Hawkers and Peddlers**—Statutory Construction.—Defendant, who drove a tea company's wagon through the country, taking orders, over a regular route, and returning to deliver the goods ordered, the customers not being bound to take the goods which they had ordered, and trips being made every two weeks approximately, was a peddler within Laws 1915, p. 517, § 1, subd. 82.—Johnston v. State, Ala., 78 So. 419.

46. **Husband and Wife**—Separate Property.—Note received in payment for real property owned by wife before her marriage, and made payable to her and to her husband "share and share alike," did not vest a one-half interest in him, as there was no express assent in writing on the part of the wife, as required by Rev. St. 1909, § 8309.—Messenbaugh v. Goll, Mo., 202 S. W. 265.

47.——Survivorship. — Husband, survivor in community, can stand in judgment alone in suit via executiva or via ordinaria for foreclosure of mortgage upon community property securing debt due from him as head of community.—Beck v. Natalie Oil Co., La., 78 So. 430.

48. **Injunction**—Damages. — Standing timber purchased from owner of land, with license to cut and removed it, so far partakes of nature of real property that right of removal will be protected by injunction where the landowner's continuous interference might prevent removal within time limited, for action for damages for trespass would be inadequate.—United Timber Corp. v. Bivens, U. S. D. C., 248 Fed. 554.

49. **Insane Persons**—Guardian.—Where guardian compromised and settled insane ward's interest in insolvent corporation, and whole amount stipulated was paid in consideration of release of ward's rights, guardian should be charged in his final account with such amount, less proper credits; money not received by him having been improvidently expended at his direction.—Harton v. Powell, Ala., 78 So. 373.

50. **Insurance**—Accident.—Provision of a policy insuring against death resulting from bodily injuries received "through external, violent, and accidental means" construed, and the death of an insured from opening a pimple with an infected pin held within the policy.—Lewis v. Iowa State Traveling Men's Assn., U. S. D. C., 248 Fed. 602.

51.——Accident. — Where an accident policy provided for physician's reports every 15 days during disability of more than a month, such reports were not necessary, where defendant repudiated liability because of the kind of sickness from which insured was suffering.—Rosenbaum v. National Acc. Soc., N. Y., 170 N. Y. S. 27.

52.——Blanks in Policy.—Where applicant for insurance, being refused amounts asked, again applied, leaving vacant the amount blanks, and insurer sent policies for lower amounts than originally asked to its agent, instructing him to deliver them and collect premiums if satisfactory, but property was destroyed by fire before he took the matter up with applicant, company was not bound.—Salisbury v. Indiana & Ohio Live Stock Ins. Co., Mo., 202 S. W. 412.

53.——Burden of Proof.—Insurer has burden of proving suicide to escape liability on policy conditioned against suicide, where death could have resulted either from homicide or suicide. —Aetna Life Ins. Co. v. Wepfer, Ark., 202 S. W. 475.

54.——Cash Value.—Actual cash value of petroleum oils, covered by policy providing that insurer should not be liable for sum in excess of such value, is market value of oils lost.—Globe & Rutgers Ins. Co. of City of New York v. Prairie Oil & Gas Co., U. S. C. C. A., 248 Fed. 452.

55.——Defined.—The word "stranded" means that the vessel must remain stationary for a time, and implies a settling of the vessel and an interruption of the voyage under extraordinary circumstances.—Amok Gold Mining Co. v. Canton Ins. Office, Cal., 171 Pac. 1098.

56.——Estoppel.—Practice of accepting delinquent dues if offered before 6th of month, and record showing expulsion for failure to pay dues, followed by notice to him between 2d and 6th, does not excuse omission to offer money before 6th if he is to rely on practice.—Conroy v. Grand Lodge of Brotherhood of Railroad Trainmen, Kan., 171 Pac. 1161.

57.——Evidence.—Proof of death showing age of deceased to be greater than that stated in his application furnishes some evidence as to his age entitling insurer to go to jury on that issue.—Reserve Loan Life Ins. Co. v. Isom, Okla., 171 Pac. 1106.

58.——Fire.—Provision in fire insurance policy that lumber should be located a clear space of 200 feet from any "wood-working establishment" might exclude a saw mill, as it is usually applied to plants with more complicated machinery.—Smith v. National Fire Ins. Co., N. C., 95 S. E. 552.

59.——Payment.—Where insured's wife, designated beneficiary of his accident and health policy, neglected him in his last sickness, and his brothers maintained him, provided a nurse, and paid physician's and undertaker's bill, their receipt for proceeds of such policy was, under facility of payment clause, good defense to insurer in suit by wife for proceeds.—Walser v. Gate City Life & Health Ins. Co., N. C., 95 S. E. 542.

60.——Premiums.—Where life policy made first day of each month due date for premiums, insurer's permitting insured to give order on paymaster for premiums to be deducted from pay on later date was extension of credit until such later date.—Continental Casualty Co. v. Vines, Ala., 78 So. 392.

61.——Venue of Action.—Cause of action against insurance company for return, in view of cancellation of policy, of money paid on first premium, is not a "suit upon an insurance policy" within Rev. St. 1911, art. 4744, providing that "suit on [insurance] policies * * * may be instituted * * * where the policy holder or beneficiary resides."—Reliance Life Ins. Co. v. Robinson, Tex., 202 S. W. 354.

62. **Intoxicating Liquors**—Conflict of Law.—Contract made in Colorado and valid there in consideration of transfer of saloon and stock of intoxicating liquors will be enforced by courts of Oklahoma, when it is not shown that it contemplated a violation of Oklahoma law.—Fist v. La Batte, Okla., 171 Pac. 1120.

63.——Unlawful Manufacture.—Where defendant not only permitted illegal business of manufacturing liquor to be done in his house, but furnished still and place for using it, he was participant in crime of manufacturing liquor contrary to Pub. Laws 1917, c. 157, and might be convicted.—State v. Jones, N. C., 95 S. E. 576.

64. **Landlord and Tenant**—Rescission.—Where defendants entered on land under lease with option to buy, having presumptive knowledge of existence of road across land, such road being obvious, and they retained possession until expiration of lease and option, they could not then rescind and avoid fulfilled obligations.—Ferguson v. Edgar, Cal., 171 Pac. 1061.

65. **Livery Stable and Garage Keepers**—Lien.—Where garage keeper permitted automobile to be taken out by third party, and it was by latter loaned to defendant, who failed to return it before third party became insolvent, garage keeper lost his lien on car; Lien Law, § 184, though extending common-law lien, still making lien depend on possession.—Grand Garage v. Pacific Bank, N. Y., 170 N. Y. S. 2.

66. **Master and Servant**—Assumption of Risk.—Where experienced servant in gumming saws on emery wheel which had no hood knew of the liability of such wheels to burst, but never requested a hood, he assumed the risk of the bursting wheel.—Export Cooperage Co. v. Ramsey, Ark., 202 S. W. 468.

67.——Industrial Commission.—Where Industrial Commission in making award under Workmen's Compensation Law found no written notice was served upon the master within period required, but master had actual notice within 10 days and applicant did not intend to mislead master through failure of notice, applicant was not precluded from recovery under St. 1917, § 2394—11.—A. Breslauer Co. v. Industrial Commission of Wisconsin, Wis., 167 N. W. 256.

68.——Proximate Cause.—Proximate cause has nothing to do with liability for brakeman's death resulting from defective car handhold under federal Employers' Liability Act April 22, 1908, and federal Safety Appliance Act April 14, 1910—Sullivan v. Minneapolis, St. P. & S. S. M. Ry. Co., Wis., 167 N. W. 311.

69.——Proximate Cause.—Where there was evidence that injury to plaintiff's intestate resulted in pleurisy and pneumonia causing his death, finding of Industrial Commission that such injury was proximate cause of death will not be set aside on appeal.—A. Breslauer Co. v. Industrial Commission of Wisconsin, Wis., 167 N. W. 256.

70.——Workmen's Compensation Act.—Where stevedore, injured in loading vessel, received payment from insurer of his employer pursuant to Texas Workmen's Compensation Act, held that acceptance of such payment did not bar claim against vessel, act being inapplicable thereto, and amount at most to pro tanto satisfaction.—The Emilia S. De Perez, U. S. C. C. A., 248 Fed. 480.

71. **Mechanics' Liens**—Attorney Fees.—Sureties on contractor's bond given to hold obligee harmless from liens arising on contractor's order including attorney's fees, and made for benefit of lienholders, were liable for attorney's fees in enforcing lien assigned under Rev. Laws 1910, § 3872.—Wilson v. Vander Molen, Okla., 171 Pac. 1104.

72.——Materialmen.—Where material is furnished to owner under agreement that it is to be used on his land, the materialman, under Comp. Laws 1913, § 6814, has right to lien, though owner diverts material to use on other land.—McCaull-Webster Elevator Co. v. Adams, N. D., 167 N. W. 330.

73. **Mines and Minerals**—Breach of Contract.—Where lessee of mine agreed to operate it continuously and "to keep the machinery in as good working order as when he took possession," he breached the lease when he did not rebuild within a reasonable time the mill, practically destroyed by unusual flood, although he continued to mine free ore.—Bradley v. Holliman, Ark., 202 S. W. 469.

74. **Mortgages**—Advertisement of Sale.—Recorder's error in copying trust deed requiring notice of sale to be published once a week, by writing "'twice a week," was not such as to render the recordation void, where all other matters were correctly copied, so that a subsequent purchaser could not disregard such record as of no validity.—Dawes v. Tucker, Cal., 171 Pac. 1068.

75.——Foreclosure.—Right of a purchaser on foreclosure to enforce the contract is complete when the property is knocked off to him and the auctioneer signs the memorandum, and is not forfeited by 19 days' delay in payment not refused or required till that time had elapsed after the sale.—Everhart v. Adderton, N. C., 95 S. E. 614.

76. **Municipal Corporations**—Assessment.—Statutory obligation of municipal or quasi municipal corporation to pay debt or fix rate of levy necessary to provide therefor is not satisfied by assessment and rate of levy sufficient to pay if taxes are collected. There must be sufficient assessment, levy, and collection of taxes as levied actually to pay debt.—Nordis v. Montezuma Valley Irr. Dist., U. S. C. C. A., 248 Fed. 369.

77.——Dismissal of Officer.—As charter provision that member of police force shall not be subject to dismissal except after notice and trial is not irreconcilable with provision that office shall become vacant on incumbent being convicted of offense in violation of duty, application of rule that particular provisions prevail is unnecessary.—MacPhee v. Board of Police Com'rs of City and County of San Francisco, Cal., 171 Pac. 1086.

78.——Proximate Cause.—If plaintiff's intestate, a boy, in violation of law took hold of defendant's truck on a public street in an effort to gain a ride, while mounted on roller skates, and such was the cause of his injury, he could not recover unless defendant's driver saw his peril, and negligently, wilfully, or wantonly proximately cause the injury.—Renfroe v. Collins & Co., Ala., 78 So. 395.

79. **Negligence**—Imputability.—Where plaintiff, in action for injuries from being struck by defendant's automobile, though invited by another to ride home in his truck, had no con-

trol of such other, and had not become a passenger, any negligence of such other in placing his car by the curb was not imputable to plaintiff.—Irwin v. Golden State Auto Tour Co., Cal., 171 Pac. 1059.

80. **Partnership**—Elements of.—Mere agreement to divide profits of business, with no arrangements as to possible losses, plaintiff furnishing machinery and defendant furnishing ground and buildings for its installation, did not constitute them partners even in conduct of the business.—Wittling v. Schreiber, Mo., 202 S. W. 418.

81. **Quieting Title**—Laches.—Where title to wild, unoccupied lands is shown to be in complainants in suit to quiet title, and defendants have acquired no title by adverse possession, etc., complainants are not barred by laches because of failure to pay taxes when defendants under a defective deed paid such taxes and took timber, etc.—Sanborn v. South Florida Naval Stores Co., Fla., 78 So. 428.

82. **Railroads**—Joinder of Parties.—In an action against a railroad company for destruction of plaintiff's property by fire, a life tenant and remainderman may be joined as plaintiffs.—Boney v. Atlantic Coast Line R. Co., N. C., 95 S. E. 560.

83. **Release**—Joint Tortfeasors.—Where there are joint tortfeasors, there can be but one recovery, and settlement with one is release of other, exception being that, when there is not release, but covenant not to sue is given one tortfeasor, amount paid is simply credit on total recovery.—Slade v. Sherrod, N. C., 95 S. E. 577.

84. **Sales**—Contract. — Where defendants offered to sell to plaintiff corporation 96 shares of its capital stock, but offer was withdrawn in writing before its acceptance by corporation's board of directors, no contract was made between parties.—Durham Life Ins. Co. v. Moize, N. C., 95 S. E. 552.

85. **Schools and School Districts**—Res Judicata.—The rulings of the county and state superintendent upon the validity of the organization of a consolidated independent school district are not res judicata; the exclusive remedy for adjudicating such validity being by quo warranto through the courts only.—Haines v. Board of Directors of Consol. School Dist. of Wright, Iowa, 167 N. W. 192.

86. **Taxation**—Delinquency. — In state's proceeding to enforce railroad's delinquent personal property taxes, held, that certain corporate stocks and bonds and other corporate indebtedness were owned and used for railroad purposes within gross earnings statute (Gen. St. 1913, § 2226 et seq.), as limited by Const. art. 4, § 32a, and article 9, § 1, and that tax thereon was paid in gross earnings tax, and ad valorem tax could not be imposed.—State v. Northern Pac. Ry. Co., Minn., 167 N. W. 294.

87. **Telegraphs and Telephones**—Damages.—Where reporter had exclusive contract with paper to transmit bowling scores and agent for telegraph company selected by newspaper took a copy and sent it to another paper, the reporter cannot recover as damages the value of such news from the telegraph company, title thereto having passed to the newspaper on delivery thereof to its agent, the telegraph company.—Marlatt v. Western Union Telegraph Co., Wis., 167 N. W. 263.

88.——Injunction.—Telephone company, holding a municipal franchise, without municipality's consent cannot purchase another system, constructed under another franchise, and operate both separately, without having acquired the other company's franchise and property; and court of equity will enjoin such acts.—City of Wheeling v. Chesapeake & Potomac Telephone Co., W. Va., 95 S. E. 653.

89. **Tenancy in Common**—Fraud.—Where sole owner of surface and joint owner of oil and gas executed an oil and gas lease, and subsequently extended a lease under which the gas in the tract was drained by wells located on his other lands, such extension is a fraud on his cotenant, who may have the contract canceled.—McMillan v. Connor, W. Va., 95 S. E. 642.

90.——Mortgage. — A mortgagee of cotenants' land could not be compelled to accept half the mortgage note and release half the land assigned to a cotenant in partition without mortgagee's knowledge or consent.—Everhart v. Adderton, N. C., 95 S. E. 614.

91. **Trusts**—Advice of Court.—Under trust for trustee's life, for benefit of his children, who took remainder on his death, the trustee, after beneficiaries attained their majority, had no power to lease trust property for term extending beyond his death, without advice of court or approval of beneficiaries.—Cox v. Kinston Carolina R. & Lumber Co., N. C., 94 S. E. 623.

92.——Estoppel.—Where intestate owned mortgaged land, and an heir, who was administrator, allowed foreclosure and purchased at such sale, and other heirs made no claim and paid no taxes for 17 years, while administrator held adversely, the foreclosure proceedings and the sheriff's deed being of record, other heirs were estopped by laches to claim an interest in land. —Stianson v. Stianson, S. D., 167, N. W. 237.

93.——Oral Agreement. — Where an ancestor for a valuable consideration orally promises that at his death a descendent shall receive his share, but wills all his property to others, court of equity may impress a trust on property in hands of beneficiaries, which is to be regarded as arising by implication of law.—Stahl v. Stevenson, Kan., 171 Pac. 1164.

94.——Parol Trust.—In action by remaindermen to establish parol trust for their benefit, land itself, with right of control and possession, is not before court, and no decree can be entered disbursing possession of those entitled to life interest, so that it cannot be the equivalent of nor coextensive with action to declare trust and recover possession.—Pritchard v. Williams, N. C., 95 S. E. 570.

95. **Vendor and Purchaser**—Option.—Cabled suggestion by defendant French corporation that plaintiff, who desired to purchase its sugar plantation in Porto Rico, should come to Paris, held not to have created any option giving rise to action for damages on account of defendant's sale of premises before plaintiff's arrival.—Sucrerie Central Coloso de Porto Rico v. Fajardo, U. S. C. C. A., 248 Fed. 432.

96.——Reasonable Time. — Where no definite time was fixed for the performance of a contract for the sale of land, part of consideration being paid on execution of contract the payment of the balance was due within a reasonable time. —In re Whitehead's Estate, Pa., 103 Atl. 502.

97. **Wills** — Consideration. — Where insured, to induce granddaughter to sign release as heir of deceased beneficiary, promised to devise one-third of his estate to her, and by previously executed will gave entire estate to others, the granddaughter's signature to release, whether necessary or not, was a sufficient consideration for contract.—Stahl v. Stevenson, Kan., 171 Pac. 1164.

98.——Construction.—Will granting wife, as beneficiary of trust, life estate in income, dividends, and profits arising from residuary trust estate, held not, by use of words "income, dividends or profits," to require payment to wife of so-called dividends from corporation and land trusts in partial extinguishment of the remainder.—Rhode Island Hospital Trust Co. v. Bradley, R. I., 103 Atl. 486.

99.——Description of Property.—Contract to devise "200 acres of land on the home place" held sufficient description to authorize submission to jury of question of identification of land. —Stockard v. Warren, N. C., 95 S. E. 579.

100. **Witnesses**—Confidential Disclosures.—A physician employed to take X-ray picture of fractured arm, and who helps to interpret it, and advises with patient's regular physician as to treatment, cannot testify as to facts learned during such employment, if patient claims privilege granted by Rev. Codes, § 5958, par. 4.—Shaw v. City of Nampa, Idaho, 171 Pac. 1132.